

Docket No. 23-4509

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

United States of AmericaPlaintiff-Appellee,

v.

Russell Lucius LaffitteDefendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA,
BEAUFORT DIVISION, RICHARD M. GERGEL, DISTRICT JUDGE

**DEFENDANT-APPELLANT’S CERTIFICATE OF CONFIDENTIALITY
FOR REPLY TO GOVERNMENT’S RESPONSE TO MOTION FOR
RELEASE PENDING APPEAL**

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Defendant-Appellant Russell Lucius Laffitte (“Laffitte”) respectfully certifies pursuant to Local Rule 25(c)(1) that his forthcoming Reply to the Government’s Response to his Motion for Release Pending Appeal (“Reply”) contains and otherwise discloses materials held under seal by the district court. There are numerous filings sealed by the district court that Laffitte must refer to in order to fully explain why his appeal raises a “substantial question of law or fact likely to result in...reversal [or] an order for a new trial,” warranting his release pending appeal. 18 U.S.C. § 3143(b)(1)(B)(i)-(ii). Redacting and sealing this Reply is necessary to protect material sealed by several orders of the district court.

Local Rule 25(c)(1) requires a certificate of confidentiality to:

- (i) identify the sealed material;
- (ii) list the dates of the orders sealing the material or, if there is no order, the lower court or agency’s general authority to treat the material as sealed;
- (iii) specify the terms of the protective order governing the information; and
- (iv) identify the appellate document that contains the sealed information.

These requirements are addressed as follows:

1. Identity of Sealed Materials to be Referenced

- Dkt. 205 – Juror Notes
- Dkt. 212 – Transcript of *in Camera* Interview with Juror No. 88
- Dkt. 242 – Defendant’s Brief Regarding Admissibility of Jurors’ Affidavits
- Dkt. 254 – Supplemental Motion for New Trial and Partial Reply to Government’s Response in Opposition to Original Motion for New Trial
- Dkt. 257 – Juror No. 88 Affidavit
- Dkt. 258 – Juror No. 93 Affidavit

- Dkt. 261 – Defendant’s Reply to Government’s Consolidated Response to Supplemental Motion for New Trial and Admissibility of Juror Affidavits
- Dkt. 262 – Defendant’s Request for Access to Court Records and Personnel
- Dkt. 263 – Sealed Order Regarding Contact with Jurors
- Dkt. 269 – Sealed Order Regarding Admissibility of Juror Affidavits

2. Dates of Sealing Orders

- Dkt. 232 – December 21, 2022
- Dkt. 241 – December 28, 2022
- Dkt. 247 – January 3, 2023
- Dkt. 250 – January 3, 2023
- Dkt. 253 – January 3, 2023
- Dkt. 269 – March 6, 2023
- Dkt. 300 – July 17, 2023

3. Terms of Sealing Orders

- Dkt. 232 – Text Order Granting Motion to Seal Juror Affidavits, which was later vacated by Dkt. 233.
- Dkt. 241 – Text Order stating that “until the Court has had the opportunity to review the briefs of the parties as directed by Dkt. No. 233 and to rule on the matter, no party shall submit to the Court any affidavit or evidence relating to any juror statement, including but not limited to any summary of juror testimony set forth in any brief to the Court.”
- Dkt. 247 – Text Order Granting Motion to Seal Supplemental Motion for New Trial and Partial Reply to the Government’s Response in Opposition to the Original Motion.
- Dkt. 250 – Sealed Order Granting Motion to Seal Juror Affidavits. The Order further states: “The juror affidavits and the contents of those affidavits shall not be disclosed to anyone unless authorized by further order of this Court. Any submissions to the Court which in any way sets forth or summarizes the content of the juror affidavits shall be filed under seal.” Dkt. 250 at 1.
- Dkt. 253 – Text Order stating: “All briefs which reference in any way the content of juror affidavits must be filed under seal.”
- Dkt. 269 – Sealed Order, *inter alia*, continuing the district court’s “order that neither the parties nor their counsel shall disclose the content of these affidavits to any third party and may not describe or quote them in any public filing unless authorized by further order of this Court or a reviewing court of

appeals.” Dkt. 269 at 20.

- Dkt. 300 – Sealed Order providing sealed materials and stating, “Like all other sealed documents, defense counsel may not disclose the content of such documents without further order of this Court or a higher Court.” Dkt. 300 at 2.

As of July 17, 2023, the district court, upon request by counsel for Defendant-Appellant, has granted counsel for the Government and counsel for the Defendant-Appellant access to all documents filed under seal. *See* Dkt. 300 (“Newly retained defense counsel should have access to all documents, sealed and unsealed, which are provided to counsel of record.”). These documents remain under seal and are only available to the courts and the parties; they are not available to the general public.

4. Appellate Document That Contains Sealed Information

Defendant-Appellant Russell Lucius Laffitte will file a Reply, which will reference the above-listed sealed materials. Two versions of the document will be filed: a sealed version with sealed material highlighted and public version with sealed material redacted.

Dated: August 29, 2023

Respectfully submitted,

/s/ William W. Wilkins

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CERTIFICATE OF SERVICE

I certify that on August 29, 2023, the foregoing Certificate of Confidentiality was served on all counsel of record for the parties through the CM/ECF system.

Dated: August 29, 2023

/s/ William W. Wilkins

William W. Wilkins

*Counsel for Defendant-Appellant
Russell Lucius Laffitte*